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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 JOSEPH DOWNING,

Case No. 2:23-cv-00082-ART-NJK

6 Plaintiff,

ORDER

7 v.

8 DR. KHAN, *et al.*,

9 Defendants.  
10

11 Plaintiff Joseph Downing, an inmate at High Desert State Prison (HDSP),  
12 brings this civil-rights action under 42 U.S.C. § 1983 in connection with his  
13 treatment as a pretrial detainee at Clark County Detention Center (CCDC). The  
14 Court allowed Plaintiff to proceed with his claims for Fourteenth Amendment due  
15 process inadequate medical care violations against various defendants for not  
16 receiving treatment for sleep apnea and knee issues, Fourteenth Amendment  
17 due process inadequate mental health care violations against Defendants Dr.  
18 Khan and Maggie Sandquist (“Sandquist”) from “psych services”, and Fourteenth  
19 Amendment due process inadequate mental health care violations against  
20 Vincent Varias (“Varias”), another psych services employee, and Sgt. Floyd.

21 Before the Court are 1) Plaintiff’s Emergency Motion for a Temporary  
22 Restraining Order (TRO) (ECF No. 25), Plaintiff’s Motion for Relief and Affidavit  
23 (ECF No. 26), Defendants’ Motion to Dismiss (ECF No. 32), Plaintiff’s Motions to  
24 Amend his Motion for a TRO (ECF Nos. 34, 36, 53), Plaintiff’s Motion to Extend  
25 Time to Respond to Defendants’ Motion to Dismiss (ECF No. 37), Plaintiff’s  
26 Motion for the Court to Reconsider its Order Granting a Stay of Discovery (ECF  
27 No. 42), and Plaintiff’s Motion for Default Judgment (ECF No. 55).

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**I. BACKGROUND**

Plaintiff brings three claims for alleged constitutional violations that occurred while he was at CCDC. In his first claim, Plaintiff alleges that CCDC officials violated his Fourteenth Amendment right to adequate medical care by not providing treatment for his sleep apnea for thirty months nor for the gout in his left knee. (ECF No. 6 at 3, 7-8.)

In his second claim, Plaintiff alleges Plaintiff claims that Dr. Khan and Sandquist, an employee at CCDC's psych services, violated his Fourteenth Amendment right to adequate mental health care. He states that Sandquist would repeatedly remove him from the psych services unit despite needing programming and treatment only available there. (*Id.* at 5, 9-10.) Plaintiff states that Dr. Khan allowed these removals to occur and did nothing to stop Sandquist, and he would only return Plaintiff to psych services after the removal already occurred. (*Id.*) Plaintiff alleges that Sandquist and Dr. Khan were playing a game and were fully aware of how the repeated transfers would impact Plaintiff. (*Id.* at 10.) Plaintiff became suicidal and believed that both Sandquist and Dr. Khan intended for Plaintiff to kill himself. (*Id.*)

In his final claim, Plaintiff alleges that Varias, a psych services employee, ordered staff to move Plaintiff to general population. (*Id.* at 5, 11-12). Plaintiff tried informing Varias that he had just recently been moved to the psych services unit and requested Varias review his case file. (*Id.*) Instead of doing so, Varias ordered Plaintiff moved to disciplinary housing for refusing housing and said Plaintiff was not suicidal. (*Id.* at 5.) Plaintiff was taken to disciplinary housing and immediately informed Sergeant Floyd that he was suicidal and would kill himself if placed in the hole. (*Id.*) Sergeant Floyd called psych services, handcuffed Plaintiff, and placed him in the visit video cages. (*Id.*) Varias arrived and Sergeant Floyd unholstered his taser and told Varias to tase Plaintiff. (*Id.*) Both Varias and Sergeant Floyd bullied and threatened Plaintiff, including saying

1 “We should take him out back and beat him like the old days” and saying Plaintiff  
2 should just kill himself so they would have less work. (*Id.* at 11.) Instead of  
3 helping Plaintiff, these Defendants exacerbated Plaintiff’s suicidal feelings. (*Id.*)  
4 After meeting with Plaintiff again approximately twenty minutes after his original  
5 transfer order, Varias transferred Plaintiff back to the psych unit. (*Id.*) Plaintiff  
6 notes that while he was being escorted back to the psych services unit, one of  
7 the officers told Sergeant Floyd, “I know a blind spot in the cameras if you want  
8 us to fuck him up, Sgt.” (*Id.*)

## 9 **II. LEGAL STANDARD**

10 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon  
11 which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pleaded  
12 complaint must provide “a short and plain statement of the claim showing that  
13 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*  
14 *Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed  
15 factual allegations, it demands more than “labels and conclusions” or a  
16 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556  
17 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). All factual allegations  
18 set forth in the complaint are taken as true and construed in the light most  
19 favorable to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir.  
20 2001). Thus, to survive a motion to dismiss, a complaint must contain sufficient  
21 factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556  
22 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Furthermore, filings by pro se  
23 parties are to be liberally construed, especially in civil rights cases. *Hebbe v.*  
24 *Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (“[W]e continue to construe pro se filings  
25 liberally when evaluating them under *Iqbal*.”).

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### 1           **III.     DISCUSSION**

#### 2                   a.   Motions for a Temporary Restraining Order

3           Restraining orders and preliminary injunctions are “extraordinary  
4   remed[ies] never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555  
5   U.S. 7, 24 (2008). The legal standard for obtaining a temporary restraining  
6   order and the legal standard for obtaining a preliminary injunction are  
7   “substantially identical.” See *Stuhlbarg Intern. Sales Co. v. John D. Bush and*  
8   *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001), overruled on other grounds by  
9   *Winter*, 555 U.S. at 20. The Supreme Court clarified the standard for these  
10   forms of equitable relief in *Winter*, instructing that the plaintiff “must establish  
11   that [he] is likely to succeed on the merits, that [he] is likely to suffer  
12   irreparable harm in the absence of preliminary relief, that the balance of  
13   equities tips in [his] favor, and that an injunction [or restraining order] is in the  
14   public interest.” 555 U.S. at 20. The Ninth Circuit also recognizes an additional  
15   standard: “if a plaintiff can only show that there are ‘serious questions going to  
16   the merits’—a lesser showing than likelihood of success on the merits—then a  
17   preliminary injunction may still issue if the ‘balance of hardships tips sharply  
18   in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Shell*  
19   *Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting  
20   *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)).

21           A plaintiff who seeks a mandatory injunction—one that goes beyond simply  
22   maintaining the status quo during litigation—bears a “doubly demanding”  
23   burden: “[he] must establish that the law and facts clearly favor [his] position,  
24   not simply that [he] is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733,  
25   740 (9th Cir. 2015) (en banc). The Ninth Circuit has cautioned that mandatory  
26   injunctions are “particularly disfavored” and “should not issue in doubtful  
27   cases.” *Id.* (internal quotations omitted). The Prison Litigation Reform Act  
28   (“PLRA”) similarly instructs that any restraining order or preliminary injunction

1 granted with respect to prison conditions “must be narrowly drawn, extend no  
2 further than necessary to correct the harm the court finds requires preliminary  
3 relief, and be the least intrusive means necessary to correct that harm.” 18  
4 U.S.C. § 3626(a)(2).

5 Finally, “there must be a relationship between the injury claimed in the  
6 motion for injunctive relief and the conduct asserted in the underlying  
7 complaint.” *Pac. Radiation Oncology, LLC v. Queen’s Medical Ctr.*, 810 F.3d 631,  
8 636 (9th Cir. 2015) (“Pacific Radiation”). “This requires a sufficient nexus  
9 between the claims raised in a motion for injunctive relief and the claims in the  
10 underlying complaint itself.” *Id.* The necessary connection is satisfied “where  
11 the preliminary injunction would grant ‘relief of the same character as that  
12 which may be granted finally.’” *Id.* (quoting *De Beers Consol. Mines*, 325 U.S.  
13 212, 220 (1945)). “Absent that relationship or nexus, the district court lacks  
14 authority to grant the relief requested.” *Id.*

15 Plaintiff filed a motion for a TRO and multiple motions to amend concerning  
16 attempts to discipline Plaintiff for calling Ms. Porray, some of the Defendants’  
17 counsel, after she requested to talk to Plaintiff. (ECF No. 25 at 1-2.) Plaintiff  
18 alleges that prison officials have retaliated against him following the call  
19 because nobody informed Plaintiff that he was not supposed to call her for the  
20 meeting. (*Id.* at 2-4.) In his subsequent motions to amend the Motion for a  
21 TRO, Plaintiff alleges that Ms. Porray and HDSP officials “acted in concert to  
22 retaliate against [him]” and that HDSP officials charged Plaintiff with  
23 unauthorized use of equipment or mail for making the call (ECF No. 36 at 1-2,  
24 6-7.) Plaintiff further notes that he was eventually found not guilty of the  
25 charges. (ECF No. 53 at 1).

26 Plaintiff asks this Court to issue orders against individuals not named in the  
27 present case for conduct unrelated to the underlying complaint. Such an order  
28 is beyond the power of this Court. *Pac. Radiation Oncology, LLC*, 810 F.3d at

636 (“[T]here must be a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint.”). Thus, the Court will grant Plaintiff’s motions to amend his motion for a TRO (ECF Nos. 34, 36, 53) but deny Plaintiff’s motions for a TRO (ECF Nos. 25, 26).<sup>1</sup>

b. Motion for Extension of Time to Respond to Defendants’ Motion to Dismiss

Finding good cause, the Court grants Plaintiff’s Motion for an Extension of Time to Respond to Defendants’ Motion to Dismiss (ECF No. 37.) Because Plaintiff already filed his Response (ECF No. 46), the Court will grant the motion nunc pro tunc.

c. Motion to Reconsider Order Granting Stay of Discovery

Plaintiff next asks this Court to reconsider (ECF No. 42) Magistrate Judge Koppe’s order granting a stay of discovery (ECF No. 38). Plaintiff argues that he asked for extensions of time to file his opposition both to Defendants’ Motion to Dismiss and Motion to Stay Discovery in ECF No. 37. (ECF No. 42 at 1.) While Plaintiff is correct, the Court notes that Judge Koppe’s order states that “[i]f the resolution of the motion to dismiss does not result in the termination of the case, a discovery plan must be filed within 14 days of the order resolving the motion to dismiss.” (EC No. 38 at 1.) Because the order requires discovery to resume following the Court’s resolution of the motion to dismiss, which the court addresses in this order, the Court will deny this motion as moot.

d. Motion for Default Judgment

Plaintiff also filed a motion for a default judgment (ECF No. 55) in which he argues that Defendants failed to timely respond to his Motion to Amend his TRO (ECF No. 53). However, the Court notes that Defendants did file a

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<sup>1</sup> Plaintiff’s Motion for Relief (ECF No. 26) is identical to his Motion for an Emergency TRO/Emergency Restraining Order (ECF No. 25).

1 response by November 17, 2023, as required. (See ECF No. 54.) Thus, the  
2 Court will deny Plaintiff's Motion for a Default Judgment.

3 e. Motion to Dismiss

4 In their Motion to Dismiss (ECF No. 32), Defendants argue that 1) 42 USC §  
5 1997e(e) requires that claims two and three in Downing's FAC be dismissed  
6 because they do not have compensable damages; 2) Dr. Khan should be  
7 dismissed from the instant suit (claim two), because he had no personal  
8 participation in the alleged violation(s) and § 1983 actions do not permit  
9 vicarious/supervisory liability or respondeat superior; and 3) Vincent Varias  
10 should be dismissed from the action because Downing failed to allege a  
11 cognizable Fourteenth Amendment violation. The Court will deny the motion as  
12 to the claims.

13 i. Compensable Damages

14 The Court is unpersuaded by Defendants' argument that Downing's second  
15 and third claims lack compensable damages. Defendants claim that Downing's  
16 claims for inadequate mental health care treatment lack compensable damages  
17 because the Prison Litigation Reform Act (PLRA) requires more than allegations  
18 of emotional and mental injury but also physical injury that is not merely de  
19 minimis. (ECF No. 32 at 7-10.)

20 The PLRA states that "[n]o Federal civil action may be brought by a prisoner  
21 confined in a jail, prison, or other correctional facility, for mental or emotional  
22 injury suffered while in custody without a prior showing of physical injury or the  
23 commission of a sexual act (as defined in section 2246 of Title 18)." 42 USC §  
24 1997e(e). However, while the PLRA requires more than de minimis physical  
25 injury for many constitutional claims, see *Oliver v. Keller*, 289 F.3d 623, 627 (9th  
26 Cir. 2002), it does not apply to all constitutional claims, such as Fourteenth  
27 Amendment claims regarding inadequate mental health care. See *id.* at 630 ("To  
28 the extent that appellant has actionable claims for compensatory, nominal or



1 punitive damages—premised on violations of his Fourteenth Amendment rights,  
2 and not on any alleged mental or emotional injuries—we conclude the claims are  
3 not barred by § 1997e(e).”); *see also Canell v. Lightner*, 143 F.3d 1210, 1213 (9th  
4 Cir. 1998) (“The deprivation of First Amendment rights entitles a plaintiff to  
5 judicial relief wholly aside from any physical injury he can show, or any mental  
6 or emotional injury he may have incurred. Therefore, § 1997e(e) does not apply  
7 to First Amendment Claims regardless of the form of relief sought.”).

8 Here, Plaintiff’s claims are not premised on violations of any alleged mental  
9 or emotional injuries, but the violation of his Fourteenth Amendment right to  
10 adequate mental health care. Plaintiff alleges in claim two that Dr. Khan and  
11 Sandquist played a game of moving him in and out of the psych unit and “denied  
12 [him] help from psych services.” (ECF No. 6 at 4, 9-10.) Plaintiff alleges in claim  
13 three that Varias moved him from psych services and denied that Plaintiff was  
14 suicidal without checking his file when Plaintiff expressed concerns about the  
15 move. Plaintiff also alleges that both Varias and Sgt. Floyd joked about tasing  
16 Plaintiff and expressed that Plaintiff, who had told them he was suicidal, should  
17 just kill himself so that they would have less work. (*Id.* at 5, 11-12.) Plaintiff  
18 requested punitive and compensatory damages because he was “medically  
19 neglected” and his “medical & mental health went untreated by Clark County  
20 Detention Center employees.” (*Id.* at 6.) Clearly, Plaintiff brings claims for  
21 allegedly not receiving medical treatment as required by the Fourteenth  
22 Amendment, which is not subject to § 1997e(e)’s de minimis physical harm  
23 requirement. *Oliver*, 289 F.3d at 630. If this were not the case, then prisoners  
24 would be impeded from bringing many denial of mental health care claims, which  
25 would often impact plaintiffs mentally and emotionally, not physically. The Court  
26 denies Defendants’ motion to dismiss based on the argument that Plaintiff failed  
27 to allege compensable damages.

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1                   ii. Dismissal of Dr. Khan

2           The Court finds Defendants' argument that Dr. Khan cannot be held liable  
3 because he never personally participated in any alleged violation similarly  
4 unpersuasive. "Liability under § 1983 arises only upon personal participation by  
5 the defendant." *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979). "A supervisor  
6 is only liable for the constitutional violations of . . . subordinates if the supervisor  
7 participated in or directed the violations or knew of the violations and failed to  
8 act to prevent them. There is no respondeat superior liability under [§] 1983."  
9 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (citations omitted).

10          Defendants argue that Dr. Khan should be dismissed from this case because  
11 Plaintiff never argues in claim two that Dr. Khan personally participated in the  
12 alleged violations. (ECF No. 32 at 10-13.) In his amended complaint, Plaintiff  
13 alleges that Sandquist repeatedly removed him from the psych services unit, and  
14 Dr. Khan or another psych services employee would eventually move him back.  
15 He states that Dr. Khan and Sandquist were playing a game by moving him  
16 around and knew that this would make him suicidal. (ECF No. 6 at 10.) Plaintiff  
17 goes beyond merely alleging that Dr. Khan should be held liable as Sandquist's  
18 supervisor; he claims that Sandquist and Dr. Khan both participated in this  
19 scheme of moving him back and forth. At the motion to dismiss stage, the Court  
20 must take Plaintiff's factual allegations as true and construe them in the light  
21 most favorable to the plaintiff. *Lee*, 250 F.3d at 679. Despite Defendants'  
22 arguments to the contrary, Plaintiff is not required at this stage to prove that Dr.  
23 Khan was aware of the transfers prior to Plaintiff telling him. Plaintiff has  
24 sufficiently alleged that Dr. Khan personally played a role in the alleged events,  
25 so the Court will deny the motion as to this claim.

26                   iii. Dismissal of Vincent Varias

27          Defendants lastly argue that Varias should be dismissed from this case  
28 because Plaintiff failed to allege a cognizable Fourteenth Amendment violation.

1 Defendants first argue that any derogatory statements Varias made at most  
2 caused emotional or mental injury which is not cognizable under the PLRA. (ECF  
3 No. 32 at 14.) The Court has already addressed this argument earlier in the  
4 order, so the Court will simply note that it rejects the same argument here.

5 Defendants then argue that Varias's alleged statements are not the basis for  
6 a cognizable Fourteenth Amendment inadequate mental health care claim  
7 because Varias transferred Plaintiff back to the psych unit immediately after  
8 Plaintiff met with Varias for the second time. (*Id.*) Whether or not Varias  
9 immediately returned Plaintiff to the psych unit does not excuse his alleged  
10 derogatory statements against Plaintiff. Plaintiff adequately stated a claim that  
11 Varias's statements constituted a denial of mental health care treatment because  
12 they increased his suicidal ideation. No reasonable concept of mental health care  
13 treatment would include telling a person who had just expressed suicidal  
14 ideations that he should just kill himself. Thus, Varias moving Plaintiff back to  
15 the psych ward in no way shields his decision to make those statements from a  
16 claim for inadequate mental health care treatment.

17 The Court is also unpersuaded by Defendants' argument that Plaintiff failed  
18 to state a cognizable claim with regards to Varias's decisions concerning  
19 Plaintiff's placement. Defendants assert that Plaintiff faced no substantial risk  
20 of harm because Downing was already suicidal and when Plaintiff informed  
21 Varias of his suicidal ideation, Varias returned him to the psych unit. (ECF No.  
22 32 at 14.)

23 Even though Plaintiff states that he was already suicidal before the transfer,  
24 Defendant's argument ignores that Plaintiff alleges the transfer decision  
25 increased his suicidal ideation (ECF No. 6 at 5, 12.), so Plaintiff faced harm as a  
26 result of Varias's actions. Also, even if Plaintiff had not actually suffered any  
27 injury, there was still a substantial risk of harm in moving him or anyone else  
28 similarly situated from the psych ward without double checking their file or

1 taking any other preventative steps when the individual raises concerns about  
2 feeling suicidal.

3 Furthermore, Defendant's argument that Varias returned Plaintiff to the  
4 psych ward immediately after learning of Plaintiff's suicidal ideations contradicts  
5 Plaintiff's factual pleadings, which the Court must take as true and consider in  
6 the most favorable light to Plaintiff at this stage. In his complaint, Plaintiff stated  
7 that in response to his request that Varias check his file, Varias simply denied  
8 that Plaintiff was suicidal. (*Id.* at 5.) Thus, despite Defendants' claim that Varias  
9 was unaware of Plaintiff's suicidal ideations until he met with Plaintiff a second  
10 time, Plaintiff alleges he brought up his suicidal feelings immediately after being  
11 informed of the transfer. Instead of acknowledging these concerns, Varias  
12 attempted to punish Plaintiff for "refusing housing" by sending him to the  
13 disciplinary unit. As a result, the Court will deny not dismiss Varias from the  
14 case.

#### 15 **IV. CONCLUSION**

16 It is therefore ordered that the following motions are denied: 1) Plaintiff's  
17 Emergency Motion for a Temporary Restraining Order (TRO) (ECF No. 25),  
18 Plaintiff's Motion for Relief and Affidavit (ECF No. 26), Defendants' Motion to  
19 Dismiss (ECF No. 32), Plaintiff's Motion for the Court to Reconsider its Order  
20 Granting a Stay of Discovery (ECF No. 42), and Plaintiff's Motion for Default  
21 Judgment (ECF No. 55).

22 It is further ordered that Plaintiff's Motions to Amend his Motion for a TRO  
23 (ECF Nos. 34, 36, 53) are granted.

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1 It is further ordered Plaintiff's Motion to Extend Time to Respond to  
2 Defendants' Motion to Dismiss (ECF No. 37) is granted nunc pro tunc.

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4 DATED THIS 7th day of June 2024.

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8 ANNE R. TRAUM  
9 UNITED STATES DISTRICT JUDGE  
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